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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,717	11/11/2003	Claus Harder	117163-00095	7255

21324 7590 08/24/2007  
HAHN LOESER & PARKS, LLP  
One GOJO Plaza  
Suite 300  
AKRON, OH 44311-1076

EXAMINER
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TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3731

NOTIFICATION DATE	DELIVERY MODE
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08/24/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com  
akron-docket@hotmail.com

**Office Action Summary**

Application No.

10/706,717

Applicant(s)

HARDER ET AL.

Examiner

Melanie Tyson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This action is in response to applicant's amendment received on 14 June 2007.

#### ***Response to Arguments***

1. Applicant's arguments filed 14 June 2007 with respect to the rejection(s) of claim(s) 1-37 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection has been made.

#### ***Request For Information***

2. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide information that the examiner has determined is reasonably necessary to the examination of this application. It is required to complete the background description in the disclosure by documenting the supplier of the metallic material utilized to construct the stent.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-17 and 19-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (6,979,347 B1). Wu discloses an endoprosthesis (see entire document) having a carrier structure of metallic material, wherein the metallic material comprises a magnesium alloy (for example, see column 4, lines 30-35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a magnesium alloy of the composition claimed, since such magnesium alloys are well known in the art (for example, see Unsworth's patent 4,401,621; discloses magnetic alloys of such composition have good tensile properties at both ambient and elevated temperatures, and are resistant to creep while having an adequate ductility). Furthermore, the functional language of claims 7 and 25-29 has

been carefully considered, but deemed not to impose any structural limitations on the claims to make them patentably distinguishable over Wu's device, which is capable of performing the function as claimed.

Wu discloses a self-expanding or balloon expandable stent (for example, see column 3, lines 41-55) produced by cutting (for example, see column 3, lines 32-35), for use in any biological or physiological lumen (for example, column 3, lines 56-65), formed by a plurality of legs (22) and connecting elements (24), carrying an active substance (for example, see column 2, lines 1-6), and coated with a drug (for example, see column 1, lines 39-43). The legs (22) have the same suitable width (W1) and the same suitable thickness (T; column 4, lines 16-29). Since the grooves formed on the plurality of legs (22) preferably have depths less than 50% of the thickness (T) of the plurality of legs (22; column 5, lines 9-10), the ratio of largest to smallest cross-sectional area and diameter of the plurality of legs is smaller or less than 2.

6. Claims 18, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. in view of Richter (Patent No. 6,676,697 B1). Wu discloses a device as described above, where the plurality of legs (22) form rings that are connected via connecting legs (24; column 3, line 66 - column 4, line 4). However, Wu fails to disclose the connecting legs are of a smaller cross-sectional area than the plurality of legs. Richter discloses a stent having a plurality of members and connectors (Figure 1). Richter teaches that reducing the width of the connectors provides the device with greater flexibility (column 6, line 44 – column 7, line 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made

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to construct the connecting legs of the device of Wu with a smaller cross-sectional area than the legs as taught by Richter in order to provide the device with greater flexibility, which in turn allows the device to accommodate the curvature of vessels.


### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 8:30-7 (max flex schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson   
August 16, 2007

  
(JACKIE) TAN-UYEN HO  
SUPERVISORY PATENT EXAMINER